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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/787,036	02/24/2004	Robert J. Woodruff	42P6997C	3903

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EXAMINER

NEURAUTER, GEORGE C

ART UNIT PAPER NUMBER

2143

DATE MAILED: 04/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/787,036	<b>Applicant(s)</b> WOODRUFF, ROBERT J.	
	<b>Examiner</b> George C. Neurauter, Jr.	<b>Art Unit</b> 2143	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 February 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 17-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 17-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>02242004</u> . | 6) <input type="checkbox"/> Other: _____  |

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#### DETAILED ACTION

Claims 17-31 are currently presented and have been examined.

#### *Double Patenting*

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 17-31 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 and 11 of U.S. Patent No. 6 732 166 B1 to Woodruff. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 17, 22, and 27 of the instant application recite identifying most current I/O resource information based upon I/O resource information obtained from one or more respective hosts in a network or "obtaining at least a portion of an I/O resource table from one or more of...other hosts" and "identifying the

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I/O resource table obtained from the other hosts...that is the most current" as recited in claims 1-8 and 11 of US Patent 6 732 166. One of ordinary skill in the art would have found it obvious that a portion of a "table" as recited in claims 1-8 and 11 would include "information" such as recited in claims 17-31. Claims 17-31 of the instant application also recite modifying other I/O resource information stored at another host in the network based upon the most current I/O resource information or "updating the host's local I/O resource table based on the most current I/O resource table".

Claims 18-19, 21, 23-24, 26, 28-29 and 31 of the instant application recite wherein the network comprises a network cluster, obtaining, by the another host, one or more address of the one or more respective hosts in the network, and modifying the other I/O resource information to conform to the most current I/O resource information and are also not patentably distinct from the subject matter recited in claims 1 and 11 US Patent 6 732 166 for at least the same reasons as shown above.

Claims 20, 25, and 30 of the instant application recite wherein the respective I/O resource information includes time and stamp information and are also not patentably distinct from the subject matter recited in claim 2 of US Patent 6 732 166 for at least the same reasons as shown above.

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***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 17-19, 21-24, 26-29, and 31 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 4 888 726 to Struger et al.

Claim 17, Struger discloses a method comprising:

identifying, based upon respective input/output (I/O) resource information ("virtual I/O table") obtained from one or more respective hosts ("station") in a network, most current I/O resource information comprised in the respective I/O resource information and modifying other I/O resource information stored at another host in the network based upon the most current I/O resource information. (column 3, lines 1-11; column 12, lines 9-49; column 15, lines 16-26)

Regarding claim 18, Struger discloses the method of claim 17, wherein:

the network comprises a network cluster; and the respective I/O resource information identifies configuration and allocation

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of I/O resources in the network cluster. (column 2, lines 26-55; column 12, lines 9-49)

Regarding claim 19, Struger discloses the method of claim 17, further comprising obtaining, by the another host, one or more addresses of the one or more respective hosts in the network. (column 11, line 42-column 12, line 8; column 14, line 61-column 15, line 15, specifically column 14, lines 63-66 and column 15, lines 8-10)

Regarding claim 21, Struger discloses the method of claim 17, wherein the modifying comprises modifying the other I/O resource information to conform to the most current I/O resource information. (column 3, lines 1-11; column 12, lines 9-49; column 15, lines 16-26)

Claims 22-24, 26-29, and 31 are also rejected since claims 22-24, 26-29, and 31 recite an apparatus and computer program instructions that contain substantially the same limitations as recited in claims 17-19 and 21 respectively.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at

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the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 20, 25, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Struger in view of US Patent 4 644 532 to George et al.

Regarding claim 20, Struger discloses the method of claim 17.

Struger does not expressly disclose wherein the respective I/O resource information includes time and date stamp information, however, George does disclose this limitation (column 3, line 65-column 4, line 37, specifically column 4, lines 20-28; column 12, line 54-column 23, line 9)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of these references since George discloses that using a time

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stamp allows a sequential status of the information to be established and enables updates to the information to be made to allow the most current information to be used (column 4, lines 4-28; column 12, lines 54-63). In view of these specific advantages and that the references are directed to updating resource information using the most current information, one of ordinary skill would have been motivated to combine these references and would have considered them to be analogous to one another based on their related fields of endeavor.

#### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US Patent 5 671 441 A to Classen et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George C. Neurauter, Jr. whose telephone number is (571) 272-3918. The examiner can normally be reached on Monday through Friday from 9AM to 5:30PM Eastern.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wiley can be reached on (571) 272-3923. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

gcn

  
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